IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.730 OF 2005

Shri A.C. Desai ... Applicant

V/s

Sandvik Asia Ltd. & Anr. ... Respondent

Mr. Prakash Naik for applicant

Mr. D.P. Adsule, APP for the State.

Coram : V.M. Kanade, J.

Dated : 25/04/2005.

P.C. :-

1 I have heard the learned counsel for the applicant and the learned APP for the State.

2 It is the contention of the applicant that he is not the Director of the accused No.1 company which has been prosecuted by the complainant under section 138 of Negotiable Instruments Act. It is submitted by the learned counsel appearing on behalf of the applicant that the applicant was never the Director within the meaning of Companies Act, 1956 and was purely the employee of the accused No.1. It is submitted that therefore, the provisions of section 141 are not attracted vis-a-vis

applicant. It is further submitted that the complainant has clearly implicated the present applicant as the Director without verification of the record of the office of the Registrar of Companies. In support of his submission that the applicant was never the Director, the search report of Kamlesh M. Shah & Co. who has been practising as company secretary is annexed. However, the application has not annexed form 32 or other record.The applicant has also not annexed any record to show that he was an employee of the accused No.1 company. From perusal of the complaint, it can be seen in paragraph-2 that the accused was the Director and was incharge and responsible for the day to day affairs of the company. This question therefore, cannot be decided at this stage by the High Court while exercising its jurisdiction under section 482 of the Criminal Procedure Code. Criminal application is accordingly rejected.

3 The trial court however to decide this question after the evidence to adduce during the trial on merits and in accordance with law. If the application for exemption is made by the applicant, the trial court to consider the said application sympathetically and not to insist for the presence of applicant unless it is absolutely necessary.

( V.M. Kanade, J.)